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**Additional Comments of ExteneNet Systems, Inc. on
SB 637 – Small Wireless Communications Facilities Deployment Act
(as passed by the Michigan Senate)**

**Michigan House of Representatives
Committee on Energy Policy
October 4, 2018**

Mr. Chairman, Representatives, staff members and interested parties. My name is Haran Rashes. I am Director of External Relations for ExteneNet Systems, Inc., a privately held telecommunications company based in Lisle, Illinois.

As you may recall, I testified before this Honorable Committee in support of SB 637 on May 29, 2018. Today, I wish to reiterate ExteneNet's support for SB 637 and to specifically discuss the Federal Communications Commission's ("FCC") recent Declaratory Ruling and Third Report and Order regarding Facilitating Wireless Infrastructure Deployment for 5G ("FCC's Order").

Nothing in the FCC's Order precludes or preempts legislation such as SB 637. The FCC specifically declined to opine on state legislation, noting that "because state and local legal requirements can be written and structured in myriad ways, and challenges to such state or local activities could be framed in broad or narrow terms, we decline to resolve such questions here, divorced from any specific context."

The FCC's Order touches on many of the same issues that are addressed in SB 637, such as standardizing access to and the fees for placing wireless telecommunications facilities within the public rights-of-way; assuring access for small cell and distributed antenna systems to the public rights-of-way are maintained in municipalities; establishing rates for attachment to municipally owned utility poles and structures that are just and reasonable; and encouraging timely approval of small cell locations and installations, resulting in rapid deployment based on economics and consumer demand. However, the FCC's Order addresses issues on a national basis as opposed to SB 637's Michigan focus.

SB 637 remains needed legislation. ExteneNet encourages you to pass SB 637.

If portions of the FCC's Order are stayed by a Federal Court, state legislation is something to fall back on. If any municipality tells you that that SB 637 is not needed because of the FCC's Order, I respectfully request that you ask that municipality two questions, the answers to which will show you the need for SB 637: 1) Does your municipality plan to immediately implement the provisions, timeframes, and rates contained in the FCC's Order? and, 2) Will your municipality agree to refrain from participation in any challenge to the FCC's Order? I am sure that you will be unable to get most municipalities to agree to answer "yes" to those two questions – and their answers will be very telling.

The rates contained in SB 637 fall within the FCC's recommended parameters, which means that it will not be preempted by the FCC's Order. Under the FCC's Order, in the absence of SB 637, municipalities who want to charge more than the FCC has recommended for access to the public rights-of-way will have to demonstrate that "such fees nonetheless comply with the limits imposed by Section 253—that is, that they are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory." Thus, in the absence of SB 637, we will have countless Michigan municipalities engaging in cost studies to attempt to demonstrate that their costs of maintaining the public rights-of-way exceed established standards.

For many years, telecommunications companies in Michigan had to prepare and present cost studies to justify their "total service long run incremental costs" ("TSLRIC") to the Michigan Public Service Commission ("Commission"). Today we continue to see Michigan's electric companies filing cost studies with the Commission to establish their regulated rates. As a Michigan Attorney with many years of practice in public utility law, I cannot tell you how much it costs to prepare a full-blown cost study, but I can tell you it costs multiple tens of thousands of dollars to examine and challenge one before the Commission, as I have done many times. If our Michigan municipalities go down that road, they will be spending possibly hundreds of thousands of dollars each to prepare and defend such cost studies, with no guarantee that they will succeed in recouping such costs through right-of-way fees. The passage of SB 637 will eliminate such a need, saving Michigan taxpayers greatly.

The timelines for issuance of permits to build small wireless facilities under SB 637 are similar to the "shot clocks" in the FCC's Order. And, even more importantly SB 637 considers an application to be approved if a municipality does not rule within the shot clock parameters – a provision which will save scarce judicial resources and prevent court disputes.

In addition, with the passage of SB 637, both providers such as ExteNet and municipalities will have a choice of forums in which to litigate disputes, as such can be brought in either state or Federal court. Normally most people think a "choice of forum" is a bad thing, but with quicker turnaround and decision making in our Michigan state courts, having such a more efficient forum can be helpful in achieving rapid deployment of small wireless facilities.

SB 637 encourages private investment in much needed telecommunications infrastructure development that will benefit the people of Michigan and makes sure that Michigan will be on the forefront of telecommunications infrastructure deployment no matter what happens at the Federal level. ExteNet supports the passage of SB 637

Thank you.

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